QUESTION: “Put simply, a stranger to a contract cannot gain or be bound by it even if made for his benefits.” Per Ogbuinya, JCA in Multichoice Nigeria Ltd. v MCSM Ltd./ GTE [2020] All FWLR pt.1063 p. 733 at 860; paras. A-C.

In view of the above assertion, discuss the doctrine Privity of Of Contract And The exceptions thereto.

INTRODUCTION

The doctrine of Privity of Contract is a foundational principle in contract law, asserting that only parties to a contract can enforce or be bound by its terms. This rule, rooted in English common law, has shaped the contractual frameworks of many common law jurisdictions, including Nigeria. Its central aim is to uphold the sanctity of contract by ensuring that legal obligations and benefits are confined to those who voluntarily enter into the agreement. The principle was firmly established in **Tweddle v. Atkinson** where the court denied a third party the right to sue despite the contract being made for his benefit. It was further reinforced in **Dunlop Pneumatic Tyre Co Ltd v. Selfridge & Co Ltd where Lord Haldane LC** emphasized that only a person who is a party to a contract can be sued on it. These decisions underscore the traditional rigidity of the privity rule.

In Nigeria, this stance was recently affirmed in **Multichoice Nigeria Ltd. v. MCSN Ltd./GTE** where **Ogbuinya, JCA**, stated: "*Put simply, a stranger to a contract cannot gain or be bound by it even if made for his benefits*." The case illustrates how Nigerian courts continue to uphold the core logic of privity. However, while the doctrine promotes legal clarity, its strict application has attracted criticism for producing outcomes that may seem inequitable, especially where a contract is clearly intended to benefit a third party. Over time, both courts and legislatures have recognized the need for flexibility by carving out a number of exceptions to address such scenarios and balance fairness with legal certainty.

This paper will examine the origins and rationale of the privity doctrine,the General rules and applications, its judicial interpretation and practical implications, and the statutory and common law exceptions that have evolved, particularly within the Nigerian legal framework.

GENERAL RULE OF PRIVITY OF CONTRACT

The doctrine of privity of contract holds that only those who are party to a contract can sue or be sued upon it. The core of the doctrine lies in two essential principles which are:
1. No burden without consent : a person should not be burdened by obligations to which they have not agreed.
2. No benefit without consideration : a person who has not furnished consideration should not derive benefit enforceable in law.

Lord Denning in the case of **Scruttons Ltd v Midland Silicones Ltd [1962] AC 446** stated the general rule of privity of contract thus;
"There is no magic in the words 'contractual rights.' If a third party has been so closely and directly affected by the contract, and it was intended to benefit him, the law should recognize his right."

Lord Haldane LC in Dunlop Pneumatic Tyre Co Ltd v. Selfridge & Co Ltd [1915] AC 847 stated the general rule of contract as that;
"*Only a person who is a party to a contract can sue on it."*

Lord Denman in the case of **Price v Easton (1833) 4 B & Ad 433** noted that:
"*No promise can be implied to a person with whom the defendant did not contract."*

Pats-Acholonu JCA in the case of **Nwadukwe v. Uzoka (2002) 12 NWLR (Pt. 780) 139 at 161** expressed that:
"The law is settled that only parties to a contract can sue and be sued on it. A contract cannot be enforced by or against a person who is not a party to it."

The rationale behind the privity rule is grounded in fundamental contract theory of :
(a)Autonomy: Individuals should be free to determine their legal obligations.
(b)Clarity and Predictability: It ensures that legal liability is predictable and confined to those who have bargained for it.
(c)Consideration: This principle complements the doctrine of consideration, which requires mutual exchange of value.
These justifications aim to protect contractual integrity by preventing an overflow of litigation from non-parties who neither bargained for nor gave anything in exchange.

The strict application of privity of contract as seen in Right of Action and The Rule of Consideration goes thus:

RIGHT OF ACTION
The Right of Action refers to the legal right a party has to initiate a lawsuit in court when a breach of the contract takes place. It also involves the legal protection a person is entitled to such

that he can seek a remedy to atone for the wrong done. This doctrine of privity was firmly established in the nineteenth century where Lord Haldane held in the case cited earlier **(Dunlop Pneumatic Tyre Ltd v. Selfridge Ltd**) early that Dunlop could not sue Selfridge for breach because he was not the dealer who sold to him. Hence, he is not a party to the contract. It was also held in the case of **Chuba Ikpeazu v. African Continental Bank** that the bank could not sue the appellant because it was not a party to the contract and therefore could not enjoy the right of action.

Also in **Etco(Nig.) Ltd. v. Western Nigerian Development Corporation (WNDC),** the Court held that the plaintiffs could not sue the defendant on the grounds that there were no parties to the contract. On this Agbaje J. stated that when a person negotiates a contract as agent between the principal and the third party, the contract comes into existence only between the principal and the third party. Thus, the agent has no right to sue on it. We also need to note that a person who is not a party to a contract can not only enforce action to it but is also not liable to any duty. This is why the Court ruled out the Governor's suit in **Ilesa Local Planning Authority (LPA) v. Olayide**. It was said that although the respondent was a party to a contract of employment, the other party to it was the government of Oyo State and not the appellant's Authority. Nevertheless, in a situation where the plaintiff is a member of the organisation, who is a party to the contract, he can sue in representative capacity. That is he is in the position of the organisation and not in his name.

RULE OF CONSIDERATION

Asides in contracts under seal, a party needs to furnish consideration before he/she can be granted the right to sue on it.

What then is Consideration ?

Consideration here means something the law views as valuable. It could be a right, a profit, benefit or even detriment or forbearance a party undergoes. This element is key in simple contracts because without consideration, the law does not consider a person, a party to a contract on which he can exercise this right to action. This is why the Court of Appeal reiterated the principle in the case of **Ladimeji v. Federal Ministry of Works and Housing** that a contract binds only the parties to it and cannot be enforced on persons who are not parties to it even if the contract was made for the benefit of the external party. This is because the party has not furnished consideration.

The rule emphasizes the mutual exchange of something for another in order for the contract to be binding and this is what gives the parties involved the right to initiate action once breach occurs. The rule plays in **Eastwood v. Kenyon** where Eastwood, a guardian to Mrs. Kenyon took care of her till maturity. Mrs. Kenyon then promised to reimburse him for the expenses he incurred, but

she did not fulfill the promise. Eastwood's suit was dismissed on the grounds that a moral obligation to train a child is not considered. This is a duty expected of him as her guardian hence there was no contract at all. It is the duty of the Law to determine what is sufficient enough to be accepted as consideration.
By the general principle of contract, a contract cannot be enforced by a person who is not a party even if the contract is made for his benefit. Only parties to a contract can enforce it. A person who is not part of a contract does not have the enforceable right.
On the authority of **Dunlop Pneumatic Tyre Co. Ltd V. Selfridge,** only a party who provided consideration can sue. A third party to a contract even if mentioned cannot enforce it unless they are a party. Confirming the doctrine of privity, the supreme Court in **Ogunyade V. Oshunkeye** upheld that only parties to a contract can sue or be sued on it.

EXCEPTIONS TO PRIVITY OF CONTRACT

The general rule of privity of contract maintains that only parties to a contract can sue or be sued under it. However, to prevent injustice and reflect commercial realities, courts have recognized exceptions to this rule. The exceptions which would be examined subsequently are (a) Right of Action (b) Rule of Consideration (c) Specific Performance (d) Damages (e)

SPECIFIC PERFORMANCE

Specific performance is an equitable remedy that compels a party to perform their contractual obligations, rather than merely paying damages for breach. This remedy is most commonly used when damages would be inadequate, such as in contracts for the sale of land or unique goods.

Under privity of contract, only parties to the contract may seek specific performance. This means that a third party, even if a contract is made for their benefit, generally cannot sue for specific performance unless they fall within an exception to privity (e.g., trust of a promise, collateral contract, or statutory provisions).
In **Beswick V. Berwick,** Peter transferred his coal delivery business to John Beswrick upon a promise by John to pay money to Peter and his wife for life. The contract was made only between Peter and John without the wife being involved. When Peter died, John refused to make the promised payment to Peter's wife. She went to court in the capacity of (i) an administrator of Peter's estate and (ii) in her personal capacity. The gourmet referred to the earlier decisions like **Robertson v. Wait (1853)** and **Lloyd's v. Harper (1880)** which established that when a contract is made with one party (X) for the benefit of another (Y), X can bring an action for the benefit of Y and recover all dues as if the contract was made with Y. The contracting party may, either alone or with the third party beneficiary, have the contract performed by a way of court order or

specific performance. Accordingly, the court upheld Mrs Beswick's claim in her capacity as the estate administrator succeeded and court ordered John to pay and continue the payment.

However, her personal claim was denied due to the doctrine of privity which bars enforcement of a contract by someone who is not a party to it. Also, the court clarified that the contracting party enforcing the contract on behalf of the third party cannot personally retain the money and must hold it for the third person. Accordingly, although Mrs Beswick acted in a representative capacity, the received funds were for her personal benefit.

STAY OF PROCEEDING

Stay of proceeding is a remedy which is applicable in a situation where a contract provides for a covenant to not sue the third party. It is used when someone sues in violation of a previous agreement not to do so.
For example, if two parties A and B sign a contract saying they won't sue a third party, and one of them breaks that agreement and starts a lawsuit, the other contracting party can ask the court to stay or stop the case from going forward. This remedy was relevant in **Snelling v. John G. Snelling Ltd**. In this case, three brothers agreed that they would forfeit their debt owed to them by the company if they resign. One of them resigned and sued the company to recover the money. The question, thus, arose whether one of the brothers could sue the company for recovery of debt, notwithstanding the agreement of forfeiture. The company along with the other two brothers (by way of counterclaim) sought to invoke the agreement so as to stay the legal action, and/or dismiss the recovery claim.

Before a stay can be granted, there are conditions.
(i) The contract must clearly provide for an undertaking that the promisor has agreed not to sue the third party.
(ii) The promisee must have real interest in enforcing such a promise.

DAMAGES

Damages are the primary remedy for breach of contract, intended to place the injured party in the position they would have occupied had the contract been properly performed. However, the privity doctrine limits this right to the parties to the contract.

In the classic English case of **Tweddle v. Atkinson,** the plaintiff, although a beneficiary of the contract, was unable to enforce it because he was not a party to the agreement between his father and father-in-law. Similarly, in **Beswick v. Beswick**, the House of Lords held that a widow could

not personally enforce an agreement made between her late husband and his nephew. Nevertheless, she succeeded in her claim when she sued in her capacity as the administrator of her husband's estate, illustrating how procedural mechanisms can sometimes bypass the rigidity of privity to serve justice.
This case demonstrates the courts' willingness, in appropriate circumstances, to mitigate the harsh consequences of privity in the interest of fairness.

INJUNCTION

An injunction is an equitable remedy in the form of a court order that either restrains a party from breaching a contract or compels specific performance. The ability to seek such relief is generally confined to the parties to the contract.
This principle was affirmed in **Linden Gardens Trust Ltd v. Lenesta Sludge Disposals Ltd**, where a third party could not seek an injunction or enforce the contract because they were not one of its original parties.
Nonetheless, courts have occasionally adopted legal constructs to circumvent privity. For instance, in some cases, a contract has been construed as creating a trust for the benefit of a third party, or a collateral contract has been implied between a party and a third-party beneficiary. In the Nigerian legal context, statutory interventions have also provided exceptions.
Notably, **Section 81(1) of the Property and Conveyancing Law** empowers certain third parties, particularly those with interests in land transactions, to enforce contractual rights even in the absence of direct privity.

STATUTES

Some of the statutes are the following:

Carriage of Goods by Sea Act (1992) applicable in Nigeria and Uk. This gives third party Consignees rights under the bill of laden.
A consignee is a person to whom goods are shipped and who is intended to receive them, especially a bill of laden (a document used in transportation of goods).

Under the doctrine of privity of contract, a consignee may not be a party to the contract between a Consignor and the Carrier. However, this statute grants an exception to the Consignee who is a third party (a stranger).

Motor vehicle (Third Party Insurance) Act 1990 gives right to Third Parties to bring claims against insurance companies, although they are not parties to the Insurance Contract.

The case of **Vandepitte V. Preferred Accident Insurance Corp (1933)**, a Canadian case that allowed a third party beneficiary to claim under an insurance policy on the basis of trust principle.

Consumer Protection laws.
Various Consumer Protection statutes might also allow consumers to have rights against manufacturers or suppliers even when they did not purchase the product directly under contract, such as warranty rights or product liability laws.
Contract (Rights of Third Parties) Act 1999 UK: The statute allows a third party to enforce a contract if the contract expressly allows it or if the contract purports to confer a benefit on them.

TRUST

Trust is a well recognized exception to the general rule in Privity of Contract.
When a Party called a Trustee enters into a contract intended to benefit a third party (the beneficiary), the law may construe a trust in favour of that third party. In such cases, the third party, though not a signatory to the contract, may be allowed to enforce it in equity. The contracting party (Trustee), is seen as holding the benefit of the contract in Trust for the Third party.
In the case of **Dutton V. Poole (1678)**
The court enforced a promise made by a father to his son for the benefit of his sister. This is one of the earliest Trust based exceptions to Privity of Contract

COLLATERAL CONTRACT:

A collateral contract is a separate and independent agreement that coexists with a principal contract. It arises where a party (A) makes a representation to another (B) which induces B to enter into a contract with a third party (C). Although B and A are not parties to the main contract, the law may treat the initial assurance as a binding promise enforceable in its own right thereby creating enforceable rights for a non-party.

To establish a valid collateral contract, the following must be proven:
(I)Clear representation or assurance
(ii)Intention to create legal relations
(iii)Inducement (the representation must have caused the other party to enter the main contract)

In **Shanklin Pier Ltd v. Detel Products Ltd (1951) 2 KB 854**, the court held that a collateral contract existed between Shanklin Pier and Detel, even though they had no direct contractual relationship. Detel’s assurance about the durability of its paint induced Shanklin Pier to instruct painters to use it. This assurance was enforceable as a collateral contract.

The Court in the English case of **Wells (Merstham) Ltd v. Buckland Sand and Silica Co Ltd [1965] 2 QB 170**, reaffirmed that representations forming part of pre-contractual negotiations can become binding warranties enforceable independently.

Nigerian Perspective
While Nigerian jurisprudence does not frequently litigate collateral contracts, the doctrine is recognized under received English law. In **Niger Insurance Co. Ltd v. Abed Brothers Ltd [1976] 6 SC 35**, the Supreme Court demonstrated a willingness to consider representations made outside the main agreement.

In **Scoa Nigeria Ltd v. Sterling Bank Plc [2016] LPELR-40108(CA),** the Court of Appeal explored whether representations made to induce reliance could form enforceable rights. While no collateral contract was found, the case confirmed Nigerian courts' openness to the doctrine.

Collateral contracts provide a flexible legal tool that mitigates the rigidity of privity. They are especially useful in commercial transactions involving multiple parties or reliance on representations made by non-contracting entities. While more developed in English law, the doctrine remains applicable in Nigeria, ensuring fairness and justice in layered contractual relationships.

ASSIGNMENT OF CONTRACTUAL RIGHTS

While the doctrine of privity restricts the enforceability of contractual obligations and benefits to the original parties , the doctrine of assignment allows a third party (the assignee) to step into the shoes of a party (the assignor) and enforce contractual rights, even without being part of the original agreement. This constitutes a significant exception to the privity rule.

Nature of Assignment

Assignment is the legal transfer of contractual rights from one party to another. The assignor transfers the benefits (but not necessarily obligations) of a contract to the assignee. Upon valid assignment, the assignee gains the right to enforce the contract against the other party (the obligor).

What differentiate an assignment from novation is that while assignment involves transfer of rights alone, novation is a complete substitution of one party by another, involving all parties' consent. It creates a new contract and transfers both rights and obligations.
Under Nigerian law **Section 81(1) of the Property and Conveyancing Law** (Western Nigeria) allows third parties to enforce rights made for their benefit.
Equitable principles and English common law, received into Nigerian jurisprudence, also support assignment.

In **Ajayi v. Total Nigeria Plc [2013] LPELR-20898(CA)**, the Nigerian Court of Appeal upheld the right of an assignee to enforce a contract, emphasizing the need to prove the existence and validity of the assignment.

In **Interdrill Nigeria Ltd v. UBA Plc [2017] LPELR-41907(SC),** the Supreme Court distinguished assignment from novation and clarified that novation requires mutual agreement among all parties and creates a fresh contract.

In **Tolhurst v. Associated Portland Cement Manufacturers Ltd [1902] 2 KB 660**, the English court held that an assignee of a commercial supply contract had standing to enforce it, even though not a party to the original contract.

Transfer of rights by assignment is widely used in:
(i)Banking and finance (debt assignments, loan sales)
(ii)Insurance (beneficiaries of life insurance)
(iii)Real estate (lease transfers),
(iv)Intellectual property (licensing and rights transfers).

Assignment offers a practical and legally recognized way to bypass the constraints of privity in modern commerce. Nigerian courts, guided by statutory and common law principles, recognize this exception, promoting flexibility, efficiency, and fairness in contractual dealings.

RESTRICTIVE COVENANTS ON LAND

Restrictive covenants are private agreements between landowners that restrict the use or development of one piece of land (the "burdened land") for the benefit of another piece of land (the "benefited land"). They are a form of private planning control and are typically embedded in the title deeds of a property or a separate declaration. Simply put they are covenants imposing a restriction on the use of land so that the value and enjoyment of adjoining land will be preserved. a covenant imposing a restriction on the use of land so that the value
and enjoyment of adjoining land will be preserved.

Nature of Restrictive Covenants on Land:

Negative in nature: They generally prevent a landowner from doing something, rather than requiring them to do something (e.g., "not to build above two stories," "not to use the land for commercial purposes"). Positive covenants, which require an active action or expenditure, generally do not "run with the land" as easily, meaning they may not bind subsequent owners.

Run with the land: This is a crucial aspect. Once properly established, restrictive covenants bind not just the original parties who agreed to them, but also subsequent owners of the burdened land, regardless of whether they were aware of the covenant at the time of purchase (though proper registration is often required for enforceability).

Purpose: They are typically put in place to preserve the value, character, and enjoyment of adjoining or nearby land. For example, a developer might impose restrictive covenants on a new housing estate to ensure a consistent appearance or to prevent commercial activities.

Enforceability of Restrictive Covenants
Beneficiary:

The person or entity who owns the "benefited land" can enforce the covenant. This could be a neighbouring landowner, a property developer, or an estate management company.
If a restrictive covenant is breached, the beneficiary can seek legal action, which may include:
Injunction (A court order forcing the breaching party to stop the offending activity or undo unauthorized changes),
Damages: Monetary compensation for any financial loss caused by the breach (e.g., reduction in property value).
Negotiation/Release: In some cases, the parties may negotiate to release or modify the covenant, often in exchange for a financial payment.
Discharge/Modification: Restrictive covenants can be discharged or modified under certain circumstances, such as if they become obsolete, impede reasonable use of the land, or by mutual agreement.

The Nigerian law generally recognizes and enforces restrictive covenants, particularly if they "touch and concern" an identifiable land and there was an intention for the benefit to run with the land. However, enforceability can be subject to considerations of reasonableness and public policy, especially in the context of agreements that could be seen as "restraint of trade." **The Federal Competition and Consumer Protection Act (FCCPA)** in Nigeria also has provisions that may affect the enforceability of certain restrictive covenants, particularly if they are anti-competitive or exceed a specified duration (e.g., two years).

NEGLIGENCE IN LAND OWNERSHIP AND TRANSACTIONS

Negligence in a legal context refers to the failure to exercise the level of care that a reasonably prudent person would have exercised in the same circumstances, resulting in harm or damage to another. In the context of land, negligence can arise in various scenarios:

1. Property Owner Negligence (Premises Liability)

a**. Duty of Care**: Property owners have a duty to exercise reasonable care in maintaining their property to ensure it is safe for lawful visitors. This duty generally extends to preventing foreseeable harm.

b. **Breach of Duty**: This occurs when the property owner fails to meet that standard of care. Examples include:

c. **Failing to maintain safe premises** (e.g., uneven sidewalks, inadequate lighting, structural defects).

d. Not warning visitors about known hazards.

e. Violating building codes or safety regulations.

f. Causation: The property owner's breach of duty must be a direct cause of the injury or damage suffered by another person.

g. Damages: The injured party must have suffered actual harm (e.g., medical expenses, lost wages, pain and suffering).

Common examples include slip and fall accidents, injuries from poorly maintained structures, inadequate security leading to crime.

2. Negligence in Real Estate Transactions:

a. **Real estate agents/brokers**: These professionals owe a duty of care and often a fiduciary duty to their clients (buyers or sellers). Negligence can occur when they fail to meet professional standards, causing harm to their clients. Examples include:

b. **Misrepresentation**: Providing false or misleading information about a property, even if unintentional, if they lacked reasonable grounds for believing it to be true.

c. **Failure to disclose**: Not informing a buyer about known material defects in a property (e.g., structural issues, mold, pest infestations).

d. **Inadequate due diligence**: Failing to properly investigate property details or verify essential documents.

e. **Breach of fiduciary duty**: Putting their own interests or those of another party before their client's.

f. Mishandling client funds or information.

Other parties such as Lawyers, surveyors, and other professionals involved in real estate transactions also owe a duty of care to their clients. Their negligence (e.g., providing incorrect legal advice, conducting a faulty survey) can lead to significant financial losses and legal disputes.

Elements of a Negligence Claim (General):

To successfully sue for negligence, the claimant typically needs to prove four elements:
1. Duty of Care: The defendant owed a legal duty to the plaintiff.
2. Breach of Duty: The defendant breached that duty by acting or failing to act in a way that a reasonable person would not have.
3. Causation: The defendant's breach directly caused the plaintiff's injury or damage.
4. Damages: The plaintiff suffered actual damages as a result of the injury.

SALE OF FAMILY LAND IN CUSTOMARY LAW

Under customary law, family land is not the personal property of any one individual but is owned communally by all members of the family both past, present, and even future generations. Because of this, when a family head or any member sells family land without the consent of the principal family members, those members can go to court to challenge or set aside the sale, even if they were not direct parties to the sale agreement.
This is a recognized exception to the doctrine of privity. In **cases like Lewis v. Bankole (1908) 1 NLR 81** and **Agaran v. Olushi (1907) 1 NLR 66**, it was established that members of a family have the right to bring an action to set aside a conveyance of family land that was done without their consent. In **Adejumo v. Ayantegbe [1989] 3 NWLR (Pt.110) 417, Justice Karibi-Whyte** explained the reason thus: "*family land under customary law is communal, so every family member is essentially a co-owner and not a stranger to any transaction involving the land. Because of that communal ownership, it doesn't matter if a family member wasn't directly involved in the sale, they still have a legal right to challenge it*".
For example, if an uncle secretly sells family land to an outsider without telling the main family members, any principal member of the family can file a suit to nullify that sale. The buyer cannot rely on privity to argue that the other family members have no right to challenge the contract.

CONTRACTS FOR THE HIRE OF A CHATTEL

Another important exception appears in contracts involving the hire of chattels especially in shipping, with charter party agreements. The classic case is **De Mattos v. Gibson (1858) De G. & J. 276**. Here, A chartered his ship to B. During the period of the charter, A mortgaged the ship to C. C knew about the existing charterparty but still tried to use or dispose of the ship in a way that conflicted with B's rights. The court held that because C acquired the ship with knowledge of the earlier contract, he could be restrained from using the ship inconsistently with the charterparty, even though C wasn't a party to the charter.

Knight Bruce LJ, in **De Mattos v. Gibson,** stated that when someone acquires property knowing it is already subject to a contract with a third party, they cannot ignore that contract and use the property in a way that damages the third party's rights. This means that although C was a stranger to the contract between A and B, he could be bound by it because of his knowledge of the existing agreement.

For instance, if A leases out his car to B for a year, then sells the car to C while the lease is still running and C knows about the lease C can't just seize the car from B or use it in a way that breaches B's lease rights. Even though B and C have no contract between them, the court can issue an injunction to stop C from interfering.

TORT

Tort arises where a third party, with knowledge of an existing contract between two parties, intentionally induces one of them to breach the agreement, causing harm to the other. The elements required to establish this tort include the existence of a valid and enforceable contract, knowledge of the contract by the defendant, intentional inducement to breach the contract, and resulting damage to the claimant.
Though primarily developed in English common law, Nigerian courts have acknowledged its applicability under general tort law principles. The case of **British Motor Trade Association v. Salvadori [1949] Ch. 556** illustrates liability for such interference. While this is not a Nigerian decision, it underscores a growing recognition that third-party interference in contractual relations can be actionable in tort. Thus, even though a third party may not be privy to a contract, they can still be held liable if they wrongfully cause a breach of that contract.

TRUST CONCEPT

Another significant legal mechanism for circumventing the privity rule is the trust concept. Courts in equity may find that a party to a contract holds rights in trust for a third-party beneficiary, thereby allowing the beneficiary to enforce the contract. This is particularly important where contracts are expressly made for the benefit of a third party. In such situations, one party (the promisor) may be seen as holding a contractual obligation in trust for the third-party beneficiary. **Sagay** supports the recognition of the trust concept as a practical tool to allow enforcement by intended beneficiaries. The case of **Tomlinson v. Gill (1756) Amb 330** is cited in support of this exception. Though an old English case, it laid the foundation for recognizing the third party's right through the trust mechanism.

BANKERS COMMERCIAL CREDITS:

In international trade, a Letter of Credit (LC) is commonly used. A bank usually at the buyer's request promises to pay the seller upon receipt of certain documents proving shipment, etc. There are three parties which are,Buyer (applicant),issuing bank,Seller (beneficiary). Despite the seller not having a contract directly with the bank initially, the bank becomes obligated to pay once the seller presents conforming documents.
This scenario bypasses the privity rule. The beneficiary (seller), who's not a party to the buyer-bank contract, can still enforce payment from the bank.
We have cases like **United City Merchants (Investments) Ltd v Royal Bank of Canada [1983] 1 AC 168** where the House of Lords affirmed that once documents are in order, the bank must pay, even if the underlying contract between buyer and seller is problematic. The case of **Hamzeh Malas & Sons v British Imex Industries Ltd [1958] 2 QB 127** reinforced that letters of credit are independent of the sale contract. The bank deals only in documents.

INSURANCE CONTRACTS:

Typically, a contract of insurance is between the insurer and the insured.
However, often a third party (e.g., beneficiary under a life insurance policy) is the one who benefits from the contract.
Under traditional privity, the third party couldn't enforce the contract.
However, exceptions apply, and legislation (in many countries) has evolved to allow enforcement by third-party beneficiaries.
The case of **Prudential Assurance Co Ltd v Inland Revenue Commissioners [1904] 2 KB 658** Showed early recognition of third-party benefits in life insurance contracts, though the enforcement was still an issue.
The case of Darlington Borough Council v Wiltshier Northern Ltd [1995] 1 WLR 68 though not directly about insurance but reflects the growing judicial trend to soften the privity doctrine, including for third-party beneficiaries.

IN CONCLUSION, the doctrine of privity of contract, though rooted in the principle that only parties to a contract can sue or be sued upon it, has evolved significantly through both judicial decisions and statutory interventions. The general rule as reinforced in **Dunlop Pneumatic Tyre**

Co Ltd v Selfridge & Co Ltd [1915] AC 847 is that a third party cannot acquire rights or be subjected to obligations arising under a contract to which they are not a party. This rule, though fundamental to contract law, has often proven rigid and unjust in practice.

However, while privity upholds contractual autonomy, its rigidity has been tempered by equitable and statutory innovations. Nigerian courts, as in **Ebhotav v. P.I & P.D. Co. Ltd**., reconcile traditional privity with modern commercial needs by recognizing exceptions that promote justice. Globally, statutes like the **UK's 1999 Act** reflect a trend toward third-party inclusivity, ensuring contracts serve broader societal interests without undermining foundational principles. Thus, privity endures as a dynamic doctrine, balancing party autonomy with evolving equitable imperatives. While the doctrine of privity of contract remains a cornerstone of contract law, its exceptions and statutory reforms have significantly eroded its absoluteness. The evolution of third-party rights reflects the law's adaptability to commercial and equitable needs, ensuring that contractual intentions are honored even where strict privity would otherwise prevent enforcement.

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SCHOLARLY REFERENCE

Sagay – likely refers to I.E. Sagay, Nigerian Law of Contract, commonly cited in Nigerian contract law discussions (referenced under trust concept).